



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

March 9, 2015  
OM 15-03

Mr. Kent C. Novak

**RE: Novak v. Western Coventry Fire District**

Dear Mr. Novak:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Western Coventry Fire District (“Fire District”) is complete. By correspondence dated October 11, 2014, you allege the Fire District violated the OMA. More specifically, you allege the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when:

- 1) The unofficial minutes for the January 16, 2014 Board of Directors’ (BOD) meeting were not posted on the Secretary of State’s website until February 19, 2014. You proffer the minutes should have been posted before the February 6, 2014 meeting.
- 2) The unofficial minutes for the February 6, 2014 BOD meeting were not posted on the Secretary of State’s website until February 19, 2014, one day prior to the February 20, 2014 BOD meeting.
- 3) The unofficial minutes for the February 20, 2014 BOD meeting were not posted on the Secretary of State’s website until March 14, 2014. You proffer the minutes should have been posted before the February 27, 2014 meeting.
- 4) The unofficial minutes for the February 27, 2014 BOD meeting were not posted on the Secretary of State’s website until March 14, 2014, one day prior to the March 15, 2014 BOD meeting and six days prior to the March 20, 2014 meeting.
- 5) The approved minutes for the March 15, 2014 BOD meeting were not posted on the Secretary of State’s website until April 19, 2014, thirty-five days after the meeting. You proffer the minutes should have been posted on the Secretary of State’s website at least seven days prior to the March 20, 2014 BOD meeting.

- 6) The approved minutes for the March 20, 2014 meeting were not posted on the Secretary of State's website until April 19, 2014, thirty days after the meeting. You proffer the minutes should have been posted on the Secretary of State's website prior to the March 26, 2014 meeting.
- 7) The approved minutes for the March 26, 2014 meeting were not posted on the Secretary of State's website until April 19, 2014, twenty-four days after the meeting. You proffer the minutes should have been posted on the Secretary of State's website prior to April 15, 2014 BOD meeting.
- 8) The unofficial minutes for the April 17, 2014 meeting were not posted on the Secretary of State's website until May 13, 2014, twenty-six days after the meeting and two days before the May 15, 2014 BOD meeting.
- 9) The unofficial minutes for the May 15, 2014 meeting were not posted on the Secretary of State's website until June 16, 2014, thirty-two days after the meeting and three days before the June 19, 2014 BOD meeting.
- 10) The minutes for the September 18, 2014 BOD meeting have not been posted on the Secretary of State's website as of the date of your complaint (October 11, 2014), but were posted on October 14, 2014.
- 11) The unofficial minutes for the May 1, 2014 Standard Administrative Procedure (SAP) meeting were not posted on the Secretary of State's website until June 16, 2014.

In response to your complaint, we received a substantive response from the Fire District's legal counsel, J. William W. Harsch, Esquire, who also provided an affidavit from the Chair of the Board of Directors of the Fire District, Mr. John Humble.

Attorney Harsch states, in pertinent part:

"[B]eing a small and mainly volunteer entity, and having of necessity to address its public safety and health mandate as an absolute priority, [the Fire District] does its best to meet transparency and public records requests. Meeting minutes are the responsibility of a part-time District Clerk who is an elected District officer and not an employee of the District, and whose primary employment is as Executive Assistant to the Town Manager of Coventry.

\* \* \*

When OMA and APRA compliance concerns have been raised, [the Fire District] has promptly addressed whatever problem may have been pointed out, including guidance from [the Department of Attorney General].

\* \* \*

I would merely note that none of Mr. Novak's current complaints are substantive in that, although the minutes of meetings are obviously important, the complaint is as to the procedural/technical matter of missing required filing dates for draft minutes.

The District once again urges Mr. Novak to utilize his available avenues \* \* \* to communicate his concerns directly to the District in the first instance, reserving any further requests for the assistance of your office for any instance where he believes, in good faith, that the District is disregarding such concerns."

Mr. Humble states, in pertinent part:

"I am the Chair of the Board of Directors (BOD) of the Western Coventry Fire District (WCFD or District).

\* \* \*

The Clerk of the District, who has attended and recorded the minutes of all the meetings listed, holds a part time position. She is also Executive Assistant to the Coventry Town Manager. The recent legislative revision applying yet another reporting requirement on fire districts and setting new filing deadlines is requiring changes to previous procedures and specifically has placed additional demands on the part-time office of District Clerk. As it has in the past when such questions have been raised, the District will strive to be more attentive to the new filing requirements for draft minutes in the future.

\* \* \*

Unofficial or approved copies of minutes for any meetings held by the District are available if requested under the Access to Public Records Act. Further, the Board members, including myself, are available to District residents at virtually any time, so anyone who has a question or request as to a meeting or similar matter could easily obtain such information."

By correspondence dated October 28, 2014, this Department requested that you supplement your complaint to explain why some of these meetings would not be barred by the statute of limitations. See R.I. Gen. Laws § 42-46-8(b) ("[n]o complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred"). You filed a response dated November 6, 2014 wherein you indicate that your complaint was filed within 180 days of the public approval of the meeting minutes at which the alleged violations occurred.

The Fire District also addressed this issue and responds that allegations one through seven of your complaint are "untimely as the statutory 180 day limitation period has expired (R.I.G.L. § 42-46-8(b))." Rhode Island General Laws § 42-46-8(b) states:

“[n]o complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred.” (Emphasis added).

Respectfully, the Fire District addresses, but does not develop, this statute of limitations defense. The Fire District does not state when the meeting minutes in question were approved, if at all. In fact, our review of allegations 1–4 demonstrate that as of the date of this finding, those minutes have never been approved. As such, the statute of limitations does not bar our review of all the allegations set forth in your complaint and even if the statute of limitations were to bar this Department from the filing of a “complaint,” as R.I. Gen. Laws § 42-46-8(b) provides, for the reasons demonstrated below, it is unnecessary for us to address this issue. Additionally, the Fire District raises the issue whether you were aggrieved by this violation. In your reply, you indicated you were unable to attend Fire District meetings due to personal reasons and you depended on the Fire District’s postings on the Secretary of State’s website. Since the Fire District has not developed this aggrievement argument, and because we conclude that you have surpassed the standing hurdle, we reach the merits of your complaint.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Fire District violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires “[a]ll public bodies shall keep written minutes of all their meetings.” R.I. Gen. Laws § 42-46-7(a). Rhode Island General Laws § 42-46-7(b)(2) states that “all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state’s website.” R.I. Gen. Laws § 42-46-7(b)(2). (Emphases added). It is notable that R.I. Gen. Laws § 42-46-7(b) was enacted into law on June 15, 2013, and became effective upon passage.

Applying R.I. Gen. Laws § 42-46-7(b) to the instant facts, we make the following findings:

1. The minutes for the January 16, 2014 BOD meeting were not posted on the Secretary of State’s website until February 19, 2014. The next regularly scheduled meeting, after January 16, 2014, was February 20, 2014. The unofficial minutes should have been posted by February 6, 2014 (“within twenty-one (21) days of the meeting”). The failure to do so was a violation of the OMA.

2. The minutes for the February 6, 2014 BOD meeting were not posted on the Secretary of State's website until February 19, 2014. The next regularly scheduled meeting was February 20, 2014. The unofficial minutes should have been posted by February 13, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
3. The minutes for the February 20, 2014 BOD meeting were not posted on the Secretary of State's website until March 14, 2014. The next regularly scheduled meeting was March 20, 2014. The unofficial minutes should have been posted by March 13, 2014 ("within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier"). The failure to do so was a violation of the OMA.
4. The minutes for the February 27, 2014 BOD meeting were not posted on the Secretary of State's website until March 14, 2014. The next regularly scheduled meeting was March 20, 2014. The unofficial minutes should have been posted by March 13, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
5. The minutes for the March 15, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was March 20, 2014.<sup>1</sup> Because the March 15, 2014 minutes were not posted "within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier," the Fire District violated the OMA.
6. The minutes for the March 20, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was April 17, 2014. The unofficial meeting minutes should have been posted by April 10, 2014 ("within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier"). The failure to do so was a violation of the OMA.
7. The minutes for the March 26, 2014 BOD meeting were not posted on the Secretary of State's website until April 19, 2014. The next regularly scheduled meeting was April 17, 2014. The unofficial minutes should have been posted by April 10, 2014 ("not later than seven (7) days prior to the next regularly scheduled meeting"). The failure to do so was a violation of the OMA.
8. The minutes for the April 17, 2014 BOD meeting were not posted on the Secretary of State's website until May 13, 2014. The next regularly scheduled meeting was May 15,

---

<sup>1</sup> Although we recognize that seven (7) days prior to the next regularly scheduled meeting – March 20, 2014 – would have pre-dated the meeting in question, the evidence demonstrates that even if we used the next regularly scheduled April meeting – April 17, 2014 – the minutes were still not filed until after that meeting.

2014. The unofficial meeting minutes should have been posted by May 8, 2014 (“within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier”). The failure to do so was a violation of the OMA.

9. The minutes for the May 15, 2014 BOD meeting were not posted on the Secretary of State’s website until June 16, 2014. The next regularly scheduled meeting was June 19, 2014. The unofficial minutes should have been posted by June 5, 2014 (“within twenty-one (21) days of the meeting”). The failure to do so was a violation of the OMA.
10. The minutes for the September 18, 2014 BOD meeting were posted on the Secretary of State’s website on October 14, 2014. The next regularly scheduled meeting was October 16, 2014. The unofficial minutes should have been posted by October 9, 2014 (“within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier”). The failure to do so was a violation of the OMA.
11. The minutes for the May 1, 2014 SAP meeting were not posted on the Secretary of State’s website until June 16, 2014. It is unclear, based upon the evidence presented, whether the SAP committee held regularly scheduled meetings. Nonetheless, the SAP committee posted its meeting minutes well after twenty-one (21) days of the meeting. The failure to timely post was a violation of the OMA.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA].” R.I. Gen. Laws § 42-46-8.

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a “knowing and willful” violation. As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court:

“has held that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute \* \* \* Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the

statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.” (internal citations omitted). (Emphasis added).

On June 11, 2014, this Department issued Novak v. Western Coventry Fire District, OM 14-24, wherein this Department found that the Fire District violated the OMA by failing to timely post its unofficial minutes on the Secretary of State’s website for seven (7) meetings – the same issue we address herein. Notwithstanding this actual notice, previously, by letter dated November 4, 2013, the Attorney General advised all Fire Districts that the OMA had been amended, effective July 2013, to include R.I. Gen. Laws § 42-46-7(b)(2)’s posting requirement – the precise requirement that we find the Fire District has violated.

Considering the Attorney General’s November 3, 2013 correspondence, as well as Novak, OM 14-24, released on June 11, 2014, we have grave concerns regarding the Fire District’s failure to timely post its September 18, 2014 unofficial minutes. In doing so, we note that this is the only violation (and allegation) that occurred post-June 11, 2014 and the Fire District’s failure to timely post its March 15, 2014, March 20, 2014, March 26, 2014, and April 17, 2014 unofficial minutes appears to be barred by the expiration of the statute of limitations.<sup>2</sup> See R.I. Gen. Laws § 42-46-8. Frankly, our concern is increased by the Fire District’s representation that it “will strive to be more attentive to the new filing requirements for draft minutes in the future.” Simply stated, our goal is compliance and is supported by the OMA’s enforcement provisions.

While the Fire District’s open session unofficial minutes for the meetings discussed herein are presently posted on the Secretary of State’s website – and thus injunctive relief is not appropriate – in this instance, we believe it is appropriate to seek a supplemental response from the Fire District concerning whether the violation regarding the September 18, 2014 meeting – the meeting that occurred after the Fire District received this Department’s finding issued June 11, 2014, Novak v. Western Coventry Fire District, OM 14-24 – was willful or knowing. The issue is raised that the Fire District was actually aware of its statutory obligation to file unofficial open session minutes in a timely manner, yet failed to do so in this case.

We shall allow the Fire District the opportunity to respond to our concern that the instant violation is “willful or knowing” in accordance with DiPrete and Carmody. The Fire District’s response should not be conclusory and must be provided within ten (10) business days of the date of this finding. Should you wish, you may also provide this Department a substantive response on this same willful or knowing issue within the same ten (10) business days.

---

<sup>2</sup> Even though our precedent would have barred the review of your allegations five (5) through seven (7) concerning the meeting minutes of March 15, 2014, March 20, 2014 and March 26, 2014 since your complaint was filed within days of the expiration of the statute of limitations, see Portsmouth Democratic Town Committee v. Portsmouth Town Council, OM 11-33, nonetheless, a lawsuit with respect to these meeting minutes is currently barred by the statute of limitations. Under similar circumstances, we have declined to even consider the soon to be time barred allegations. See Tingle v. Chariho School Committee, OM 98-21; Valentine v. Narragansett Bay Commission, OM 98-22; Engelhard v. Jamestown School Committee, OM 98-27.

Thereafter, a supplemental finding will be issued concerning whether the instant violation is “willful or knowing.”

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, reading "Lisa Pinsonneault". The signature is fluid and cursive, with the first name "Lisa" and last name "Pinsonneault" clearly legible.

Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: J. William Harsch, Esquire